

**FILED**

**FEBRUARY 26, 2008**

KAREN S. MITCHELL  
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

MARCO ANTONIO ROMERO,  
aka Marco Romero Gutierrez,  
aka Marco Antonio Romero Gutierrez

Petitioner,

v.

2:07-CV-0251

NATHANIEL QUARTERMAN, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

**SUPPLEMENTAL REPORT AND RECOMMENDATION  
TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner MARCO ANTONIO ROMERO has filed with this Court a Petition for a Writ of Habeas Corpus by a Person in State Custody challenging his state conviction for the offense of sexual assault. By way of Report and Recommendation issued by this Court February 25, 2008, the undersigned recommended this petition for habeas corpus be dismissed for failure to seek permission to file a second or successive petition. The underlying procedural history is set forth in the February 25, 2008 Report and Recommendation.

Petitioner's fourth ground for seeking habeas relief was not addressed in the Report and Recommendation of February 25, 2008. To the extent the Court can comprehend petitioner's statements in his amended habeas petition filed December 26, 2007, by his fourth ground, petitioner seeks to protest actions taken, presumably, by the Deaf Smith County Sheriff's Office. Because this ground does not appear to request any relief that would entitle petitioner to release from confinement, such ground would not be cognizable on federal habeas review. Rather, it

should be pursued in an action brought under 42 U.S.C. § 1983 (civil rights action).

If petitioner wishes the Court to sever his fourth ground from the remainder of his habeas petition and to order such ground be re-filed as a suit pursuant to § 1983, petitioner shall inform the Court, **within ten (10) days** of the entry of this Report and Recommendation, of his desire for such severance. However, petitioner is advised that, if he requests such severance, **he will be responsible for payment of the \$350.00 filing fee**. Otherwise, the undersigned's recommendation that petitioner's application be dismissed as to all grounds will stand.

I.  
RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the Petition for Writ of Habeas Corpus by a Person in State Custody filed by petitioner MARCO ANTONIO ROMERO be DISMISSED.

II.  
INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a file-marked copy of this Report and Recommendation to petitioner by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 26th day of February 2008.



CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the file mark on the first page of this recommendation. Service is complete upon mailing, Fed. R. Civ. P. 5(b), and the parties are allowed a 3-day service by mail extension, Fed. R. Civ. P. 6(e). Therefore, any objections must be filed on or before the fourteenth (14<sup>th</sup>) day after this recommendation is filed. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. See *Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).